In the High Court of Judicature at Madras

Dated:27.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Writ Petition No.39875 of 2002

N. Kumara Perumal .. Petitioner

vs.

1. The Union of India
   rep. by the Secretary
   Ministry of Home Affairs
   New Delhi.

2. The Inspector General
   Central Industrial Security Force
   CISF South West Sector
   RCFL Complex
   Chembur
   Mumbai 400 074.

3. The Deputy Inspector General
   CISF Southern Zone
   D Blcok Rajaji Bhavan
   Besant Nagar, Chennai 600 090.

4. The Commandant
   CISF Unit
   Neyveli Lignite Corporation
   Neyveli. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari as stated therein.

For petitioners : Mr. T.N. Sugesh

For respondents : Mr. R. Ramanlal, S.C.G.S.C.

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The prayer in the writ petition is as follows:

> "to call for the records relating to the impugned order of the second respondent in Order No.V-11014/25/SZ/LC/SWS/02/7282 dated 05.09.2002 confirming the order of the third respondent in No.V-11014/92/2001/L&R (SZ)/254 dated 31.12.2001 and the order of the fourth respondent in Order No.V15014/01/Estt-I/NKP/2001-9025 dated 20.09.2001 and quash the same. "

2. According to the petitioner, he was working as Constable, CISF Unit, Neyveli Lignite Corporation, Neyveli. On 01.07.2000, he was detailed in "A" shift duty from 05.00 hours to 13.00 hours at the RP Gate duty of Unit Headquarters of the NLC Unit. At about 10.30 hours on 01.07.2000, the HC/GD B.Prabhakaran called him to the HQ Coy. Office. He informed the said HC/GD that he had already performed six days duty continuously. After some time, he was transferred and posted at Chennai Port Trust and he was issued with a memorandum of charge in proceedings dated 22.01.2001, pertaining to his tenure at previous Unit, viz., CISF Unit, NLC. It contains the charges that he had allegedly used abusive language against HC/GD B. Prabhakaran, when he refused to grant weekly off to him and that he had allegedly committed gross indiscipline and dereliction of duty by absenting himself for "B" shift duty from 13.00 hours to 21.00 hours on 04.07.2000 without obtaining leave.

3. Enquiry Officer was appointed on 12.02.2001 to enquire into the charges framed against him. During enquiry he sought for defence assistance, which was not accepted. Even before the second Enquiry Officer, he made a similar request for defence assistance and that was denied. After completion of the enquiry proceedings, copy of the enquiry report was served on him. The Enquiry Officer had concluded that the first charge against him is partially proved and the second charge is proved. The petitioner submitted his detailed explanation to the said enquiry report on 10.09.2001. However, the disciplinary authority passed a final order on 20.09.2001, imposing punishment of "reduction of pay by two stages from Rs.3275/- to Rs.3125/- in the time scale of pay of Rs.3050-75-3950-80-4590 with effect from 01.10.2001 for a period of one year". Against the said order, he preferred an appeal to DIG, CISF Southern Zone, Chennai, third respondent herein on 22.10.2001 and the appeal was rejected on 31.12.2001. Thereafter, he preferred a revision petition to the Inspector General, CISF, SWS, Mumbai, second respondent herein on 18.03.2002 and the revision petition was also

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rejected on 05.02.2002, however, the punishment was reduced into one of reduction of pay by one stage from Rs.3275 to 3200/- in the time scale of pay of Rs.3050-75-3950-80-4590 for one year with effect from 01.10.2001, which would not have the effect of postponing his future increments. Aggrieved by all the above three orders, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner after taking us through the charges, enquiry proceedings, report and orders of the original, appellate and revisional authorities, submitted that in view of the categorical findings rendered by the Enquiry Officer, there cannot be any punishment in respect of Charge I. He also contended that in view of specific explanation by the petitioner that he went to the hospital on 04.07.2001, which was recorded in the Control Room GD in which his return was also recorded, the second charge has to be rejected. According to the learned counsel, the above materials have not been properly considered by all the three authorities, and prayed for interference by this Court.

5. On the other hand, learned Additional Central Government Standing counsel appearing for the respondents submitted that based on the proved charges, the disciplinary authority, after affording opportunity to the petitioner, imposed appropriate punishment, which has been rightly confirmed by the appellate and revisional authorities and hence, there is no ground for interference.

6. We have carefully considered the relevant materials and the rival contentions.

7. In order to appreciate the rival contentions, it is useful to refer two charges levelled against the petitioner. They are,

"Article of Charge No.I

> Gross indiscipline and misconduct in that CISF No.882296478 Const N.R. Perumal of "Hgrs" Coy. CISF Unit Ch.P.T. Chennai while serving in CISF Unit NLC, Neyveli came to the Coy. Office leaving his "A" shift duty post of RP Gate unatuhorisedly at NLC Neyveli on 01.07.00 at about 08.30 hours and again at 10.30 hours in connection with his weekly off on 02.07.00. When the HC/GD B. Prabhakaran, CHM, Hgr Coy told due to shortage of manpower, the weekly off cannot be given to him on 02.07.00. Const N.R. Perumal got annoyed and used abusive language on HC/GD B. Prabhakaran, CHM and also threatened him of dire consequence.

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Article of Charge No.II

> Gross indiscipline and dereliction of duty in that CISF No.882296478 Const N.K. Perumal of 'Hgrs' Coy. CISF Unit Ch.P.T. Chennai while serving in CISF Unit, NLC, Neyveli absented for 'B' shift duty from 13.00 hours to 21.00 hours on 04.07.00 at RP Gate without any leave or permission."

8. Though the petitioner has prayed for defence assistance, the fact remains that on the ground of shortage of manpower, the assistance of named person was not provided. The enquiry report shows that the petitioner participated and cross-examined some of the witnesses, but, at a later stage, he expressed difficulty in continuing with the cross-examination. However, the fact remains, the petitioner participated in the enquiry. The enquiry report further shows that totally 5 persons were examined on the side of the department. After analysing the evidence of all the five witnesses, i.e., Pws.1 to 5, the Enquiry Officer has concluded,

> ".... abusing in filthy language and threatening HC/GD B. Prabhakaran by the charged official is not established due to hostile statement of Pws.2 and 3. "

The charge No.I, which we have already extracted, relates to using abusive language and threatening the HC/GD B.Prabhakaran. In view of the factual findings by the Enquiry Officer as noted above, we are of the view that the first charge remains unproved. However, the Enquiry Officer has committed an error in stating that Articles of Charge No.I is partly proved. We are of the view that the said conclusion is contrary to his own finding.

9. Now, let us consider Article of Charge No.II. We have also extracted the said charge in the earlier part of our order. The learned counsel for the petitioner has brought to our notice that pursuant to the enquiry report, the petitioner submitted his explanation on 10.09.2001. Regarding the second charge, the petitioner has specifically stated that,

> "...I submit that I had gone to the Unit Hospital on 04.07.2001 as I was called to report at the Hospital in view of certain clarifications sought for by the Department officials. The fact that I went to the Hospital had been recorded in the control room GD and my return has also been recorded. The fact that I had not absented without permission and had in fact reported promptly when directed to do so, has not at all been appreciated by the enquiry officer. ..... "

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When the above information was brought to the notice of the disciplinary authority, who has jurisdiction over the entire office, could have summoned the control room GD and verified whether the statement of the petitioner is true or not. Instead, he blamed the petitioner for not summoning the said document, which is in the custody of the disciplinary authority. Absolutely there is no explanation at all why such step had not been resorted to by the disciplinary authority. When the petitioner stated that he went to Unit Hospital after making entry in the control room GD, nothing prevented the officer concerned to verify the genuineness of the same in order to decide the issue in one way or the other. In the absence of such effort by the authority concerned, we are of the view that there is no reason to disbelieve the stand taken by the delinquent.

10. The disciplinary authority as well as the appellate and revisional authorities failed to take note of the above material aspects. We have already concluded that in view of the finding of the Enquiry Officer, Article of Charge No.I cannot be proceeded with. In so far as Article of Charge No.II is concerned, the authorities should have verified the control room GD before arriving at a conclusion on the question whether the stand taken by the petitioner is correct or not. Unfortunately, all the three authorities failed to consider this aspect and awarded punishment as if both the charges were proved beyond reasonable doubts. We are satisfied that all the three impugned orders are liable to be quashed. Accordingly, the impugned orders dated 05.09.2002, 31.12.2001 and 30.09.2001 are quashed and the writ petition is allowed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary Union of India
   Ministry of Home Affairs, New Delhi.

2. The Inspector General
   Central Industrial Security Force
   CISF South West Sector
   RCFL Complex Chembur
   Mumbai 400 074.

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3. The Deputy Inspector General
   CISF Southern Zone
   D Blcok Rajaji Bhavan
   Besant Nagar, Chennai 600 090.

4. The Commandant
   CISF Unit
   Neyveli Lignite Corporation
   Neyveli.

+ 1 cc to Mr. T. N. Sugesh, Advocate SR No. 46047

+ 1 cc to Mr. MT. Arunan, Advocate SR no. 46036

+ 1 cc to Mr. R. Ramanlal, Advocate SR No. 45906

AKM(CO)
SR/9.10.2006

Order in
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